

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-107
Hawaii Administrative Rules

May 15, 1997

1. Chapter 107 of Title 13, Hawaii Administrative Rules, entitled "Threatened and Endangered Plants" is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 1

FORESTRY

CHAPTER 107

THREATENED AND ENDANGERED PLANTS

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Historical Note: Chapter 13-107, Hawaii Administrative Rules, is based substantially upon Chapter 13-124, Hawaii Administrative Rules of the Division of Forestry and Wildlife, Department of Land and Natural Resources. [Eff 8/10/53; am 10/10/55; am 3/28/58 and ren Regulation 6; am 9/8/73; am 3/22/82 R]

§13-107-1 Purpose. The purpose of this chapter is to conserve, manage, protect, and enhance native endangered and threatened plants. [Eff] (Auth: HRS §§195D-3, 195D-4, 195D-6) (Imp: §§195D-3, 195D-4, 195D-6, 50 CFR §§17.12)

§13-107-2 Definitions. As used in this chapter unless the context requires otherwise:

"Accidental or non-negligent death" means death of plants which occurs despite the reasonable care of the plant possessor;

"Authorized representative" means the administrator, foresters, botanists, conservation enforcement officers, or other persons within the department authorized by the board to act for the board;

"Board" means the board of land and natural resources;

"Commercial use" means the transfer of a plant by a party or their agent for any fee, charge, or other compensation.

"Commercial-use plants" means garden-grown stocks (not wild-collected), belonging to a threatened or endangered species which have been approved by the department for commercial use.

"Controlled environment" means a habitat, excluding the endangered and threatened species wild population habitat, which is horticulturally manipulated for the purpose of growing and producing offspring of select species;

"Cultivated plants" means propagules or plants germinated from garden-grown stock as well as from wild populations and grown or cared for in a controlled environment;

"Cultural use" means use of plants for traditional native Hawaiian practices;

"Department" means the department of land and natural resources;

"Educational use" means use of plants or plant parts for display purposes to aid in education about that plant;

"Endangered plants" means all species, subspecies, or sub-populations of plants that have been officially listed as endangered by the State of Hawaii, including those taxa listed in the exhibit entitled "Exhibit 1, Chapter 13-107, Endangered Plants of Hawaii" dated 5/15/97, which is located at the end of this chapter and incorporated by reference;

"Experimental populations" means any populations (including offspring arising solely therefrom), resulting from outplanting outside a controlled environment;

"Garden-grown stock" means plants and propagules

from cultivated plants;

"License" means written permission by the department to do a particular act or series of acts which without such permission would be unauthorized or prohibited;

"Native" means endemic and indigenous species which arrived and occur naturally in Hawaii without the aid of humans;

"Outplanting" means planting and growing threatened and endangered plants in the wild through human intervention;

"Plant" means any member of the plant kingdom, including seeds, roots, and other parts thereof;

"Propagule" means a living plant part such as a cutting or a seed that can reproduce a plant;

"Species" means and shall include any subspecies or lower taxa of plant(s);

"State" means the State of Hawaii;

"State land" means lands under the direct control of the state;

"Take" means to cut, collect, uproot, destroy, injure, possess native endangered or threatened species of plants, or to attempt to engage in any such conduct;

"Threatened species" means all species, subspecies, or sub-populations of plants that have been officially listed as threatened by the state, including those taxa listed in the exhibit entitled "Exhibit 2, Chapter 13-107, Threatened Plants of Hawaii", dated 5/15/97, which is located at the end of this chapter and incorporated by reference;

"Wild populations" means naturally occurring populations that do not occur as a result of outplanting. [Eff] (Auth: HRS §§195D-3, 195D-4, 195D-6) (Imp: HRS §§195D-3, 195D-4, 195D-6, 50 CFR §§17.12)

§13-107-3 Prohibited activities. (a) No person shall or attempt to take, sell, or offer for sale, deliver, carry, ship, transport, or export, any native threatened or endangered plant or parts thereof from any lands within the State of Hawaii, except as an authorized representative of the department and as provided for in this chapter.

(b) No person shall outplant any threatened or endangered species on another landowner's property without the permission of the landowner and obtaining the appropriate license from the department, except as

provided for in this chapter.

(c) Horticultural activities within a controlled environment cannot be used to either justify or mitigate transplantation, removal, or destruction of wild plants or populations of both threatened and endangered plants.

(d) No person shall sell threatened and endangered plants unless that plant species has been approved by the department for commercial use. [Eff

] (Auth: HRS §§195D-3, 195D-4, 195D-6) (Imp: HRS §§195D-3, 195D-4, 195D-6, 50 CFR §§17.12)

§13-107-4 Licenses. (a) Licenses for collecting, possessing, transporting, propagating, and outplanting threatened or endangered species of plants from wild populations may be issued by the board or its authorized representative for propagation, education, cultural, or scientific purposes or to enhance the survival of the species.

(b) Applications for licenses shall be in writing and contain:

- (1) A description of the project, including its purpose, location, methods, and study plan, and length of duration;
- (2) Information as to species, location (if known), and both number of plants and plant parts to be collected;
- (3) The name, address, and affiliation of the collector(s) or organization sponsoring the project.

(c) No license may be amended or otherwise altered without the written approval of the board or its authorized representative.

(d) An annual summary of project activities shall be submitted to the department by the license holder by July 1 of each year for the duration of the license period and shall include:

- (1) The name and address of the licensee(s);
- (2) The scientific and common names of the plants involved;
- (3) The dates collection occurred;
- (4) The number of plants or plant parts collected;
- (5) The location(s) of the collection(s);
- (6) The status and results of both research conducted and propagation of collected

plants; and

- (7) Any other information required on the license.

(e) Licenses shall be revocable for due cause and shall not be assignable unless otherwise provided by law. Any person whose license has been revoked shall not be eligible for another license until the expiration of two years from the date of revocation.

(f) In addition to a license, a Hawaii department of agriculture inspection is required to transport plants between the islands.

(g) Accidental death of plants grown from cultivated and garden-grown stock under licenses will not be subject to penalty under this chapter, provided the holder of the license has exercised due care in the performance of actions authorized by the license. [Eff

] (Auth: HRS §§195D-3, 195D-4, 195D-6)

(Imp: HRS §§195D-3, 195D-4, 195D-6, 50 CFR §§17.12)

§13-107-5 Transfer of plants by licensees. (a)

License holders may give away, donate, or sell threatened and endangered plants derived from garden-grown stocks only if they comply with all requirements under this chapter.

(b) Licensee(s) are responsible for providing written information concerning restrictions established by the department and the island of origin with all plants that are given away, donated, or sold. Licensee(s) are encouraged to provide educational materials that emphasize the need to protect wild populations.

(c) An annual summary shall be submitted to the department by the license holder by July 1 of each year for the duration of the license period and shall include:

- (1) The name and address of the licensee;
- (2) The scientific, common name, and numbers of the plants given away, donated, or sold during the past fiscal year. [Eff]
(Auth: HRS §§195D-3, 195D-4, 195D-6) (Imp: HRS §§195D-3, 195D-4, 195D-6, 50 CFR §§17.12)

§13-107-6 Commercial-use plant species. (a)

All threatened and endangered plant species from garden-grown stock can be used commercially. Petitions to exclude certain threatened and endangered plant

species from being used commercially must be submitted in writing to the department.

(b) The petition will be referred to a committee composed of a minimum of five members who are knowledgeable of the biological conditions required to grow threatened and endangered plants, which shall include at least one nursery association representative, one from the native Hawaiian community knowledgeable in traditional arts and religious practices, and one citizen at large knowledgeable in the cultivation and use of native plants. The committee shall evaluate, based upon the best knowledge available, whether commercial use of a plant species will endanger wild populations of that or any other native plant species, and will make recommendations to the department, which will approve or deny these petitions.

(c) The petitioner will be responsible for obtaining the information needed by the committee to make a recommendation as to the status of a plant species.

(d) The committee will review commercial-use plant species two years after the initial recommendation, make a second recommendation five years after the initial recommendation and every two years thereafter to recommend continuing, denying, or excluding plant species from commercial use based upon chapter 195D, HRS, protection of the wild populations, enforcement issues, and enhancement of the plant species. The committee may, however, review any plant species at anytime.

(e) Commercial-use plants may only be sold if accompanied by a tag provided by the department. Each plant must have a tag which will be sold to licensees at cost and to commercial vendors with a

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surcharge to cover administrative expenses. The tag will indicate to the department, the vendor, and the buyer that the plant is from garden-grown stock and not from a wild population.

(f) Accidental death of plants sold with a tag will not be subject to penalty under this chapter.

[Eff] (Auth: HRS §§195D-3, 195D-4, 195D-6) (Imp: HRS §§195D-3, 195D-4, 195D-6, 50 CFR §§17.12)

§13-107-7 Compliance with laws. All persons applying for licenses under this chapter shall comply with all federal, state, and county laws, rules, and required permits or licenses. [Eff]
(Auth: HRS §§195D-3, 195D-4, 195D-6) (Imp: HRS §§195D-8, 195D-9)

§13-107-8 Penalty. Any person violating any part of this chapter shall be penalized as provided by law. [Eff] (Auth: HRS §§195D-3, 195D-4, 195D-6) (Imp: HRS §§195D-8, 195D-9)

§13-107-9 Exemption. (a) Person(s) who possessed plants or plant parts prior to their listing as threatened or endangered may voluntarily submit the following documentation to the division of forestry and wildlife:

- (1) The species' scientific and common name;
- (2) The location and number of plants; and
- (3) Where the plants were obtained, if known.

(b) Upon receiving this documentation, the department will send the possessor appropriate notification of exemption.

(c) Plants or their offspring from experimental populations established after their listing as threatened and/or endangered are exempt from the requirements of this chapter.

(d) Accidental death of exempted plants will not be subject to penalty under this chapter. [Eff

] (Auth: HRS §§195D-3, 195D-4, 195D-6) (Imp: HRS §§195D-3, 195D-4, 195D-6)

§13-107-10 Severability. These rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected." [Eff] (Auth: HRS §§183D-2, 183D-3) (Imp: HRS §§183D-2, 183D-3)

2. The adoption of chapter 13-107, Hawaii Administrative Rules, shall take effect ten days after filing with the office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

Chairperson, Department of
Land and Natural Resources

APPROVED AS TO FORM:

Deputy Attorney General